

Comments on Proxmire (and Harrington) Bill

The bill amends the National Security Act of 1947 by providing that nothing in this or any other act should authorize the Agency to:

(a) engage directly or indirectly, or in conjunction with any other agency or individual, in any law-enforcement or internal-security activity;

(b) assist directly or indirectly any Federal, State, or local agency in any police, law-enforcement or internal-security actions within the United States unless approved in writing by our oversight committees;

(c) participate in any illegal activity in the United States;

(d) engage in any covert action abroad unless approved in writing by our oversight committees.

Section 102(d) of the National Security Act already forbids the Agency to engage in any "police, subpoena, law-enforcement powers or internal-security functions." The legislative history of the National Security Act makes clear that this provision was designed to ensure against the Agency's ever becoming a "gestapo" type organization. At no time has the Agency ever attempted to exercise any of these proscribed powers.

However, in carrying out its foreign intelligence function, the Agency frequently develops information of major concern to domestic law-enforcement agencies. In such areas as narcotics smuggling, aerial hijacking, international terrorism, and, of course, foreign directed espionage and subversion, the Agency has a capability, and we think an obligation, to provide to domestic agencies through appropriate channels information which this Agency acquires abroad in carrying out its foreign intelligence mission.

The bill in question would appear to prohibit the communication of information of this kind to Federal, State or local authorities who alone might be in a position to use it effectively to forestall serious criminal action or security threats within the United States.

The bill also creates a serious constitutional problem by providing that any assistance given to domestic law-enforcement agencies, and any covert action conducted abroad, be undertaken only with the prior written approval of our congressional oversight committees. Among the problems this creates are:

(a) explicit statutory recognition that the United States is involved in covert action which on its face is a violation of international law;

(b) violence to the principle of separation of powers by requiring that the Legislative and Executive Branches share responsibility for executive action.

Finally, the bill contains what appears to be a completely superfluous provision that it shall be illegal for the Agency "to participate, directly or indirectly, in any illegal activity in the United States."